

**DISTRICT OFFICE: San Francisco District, Eureka Office, PM – David Ammerman, Bracut Marsh Final
Jurisdictional Determination**

FILE NUMBER: 21126N

PROJECT LOCATION INFORMATION:

State: California
County: Humboldt
Center coordinates of site (latitude/longitude): 40.831/-124.085
Approximate size of area (parcel) reviewed, including uplands: 10 acres.
Name of nearest waterway: Humboldt Bay
Name of watershed: Humboldt Bay

JURISDICTIONAL DETERMINATION

Completed: Desktop determination ☐ Date: February 12, 2008
Site visit(s) ☐ Date(s): November 16, 2007

Jurisdictional Determination (JD):

- ☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* “waters of the United States” and/or “navigable waters of the United States” on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD – An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:
- ☒ *There are* “navigable waters of the United States” (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: _____.
- ☒ *There are* “waters of the United States” (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: _____.
- ☐ *There are* “isolated, non-navigable, intra-state waters or wetlands” within the reviewed area.
☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as “navigable waters of the United States”:

- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as “waters of the United States”:

- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☐ (2) The presence of interstate waters including interstate wetlands¹.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☒ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☒ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☒ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) – (4) above.
- ☐ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Bracut Marsh is former tidelands disturbed over several decades related to forest products mills and miscellaneous fill. In the late 1980's to early 1990's the Redwood Community Action Agency received grants from the California State Coastal Conservancy to restore and enhance 6 acres of marsh and mudflat located west of Highway 101 and the Northwestern Pacific Railroad tracks and north of the existing commercial Bracut Lumber retail outlet. The RCAA received permits from the Corps in 1994, 1998 and 1999 to conduct the restoration and enhancement and conduct restoration monitoring for five years. The site is surrounded by an earthen dike constructed many years ago. An alder-willow forest is left undisturbed on the immediate east and acts as a buffer between Highway 101 and the marsh. The north and west ends of the dike surrounding the marsh were breached without a Corps permit in the 1990's, and an after-the-fact permit was issued

by the Corps in 1998. About 2,000 CY of gravel was removed to lower substrates and facilitate tidal influx. As of November 16, 2007, Bracut Marsh contains one large tidal channel, three smaller tidal channels and a mosaic of tidal mudflat, high salt marsh with *Deschampsia* sp. in linear mounds, and low pickleweed (*Salicornia virginica*) predominating. The two breaches provide adequate tidal influx and the site is inundated at the highest spring tides (8 feet MLLW). Above 8 feet is 0.07 acres of freshwater emergent pond-marsh created by the project and some forested wetland. A total of 6 acres of jurisdictional lands under Section 10 of Rivers and Harbors Act and Section 404 Clean Water Act were created as mudflat and tidal marsh. In addition to the restored site, the mouth of Rocky Gulch enters Humboldt Bay through tidegates at the north end of the site and combine with Humboldt Bay tidal action for hydrology effects to the site. Adjacent Humboldt Bay is navigable to commercial shipping and recreational boating including fishing vessels. The north end of the bay at the project site is less navigable as it is not dredged by the Corps but is nonetheless subject to ebb and flow of tides. Bracut Marsh serves the purpose of restoring mudflat and tidal marsh fringe habitat of Humboldt Bay.

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

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|---|---|
| <input type="checkbox"/> Ordinary High Water Mark indicated by: <ul style="list-style-type: none"> <input type="checkbox"/> clear, natural line impressed on the bank <input type="checkbox"/> the presence of litter and debris <input type="checkbox"/> changes in the character of soil <input type="checkbox"/> destruction of terrestrial vegetation <input type="checkbox"/> shelving <input type="checkbox"/> other: | <input checked="" type="checkbox"/> High Tide Line indicated by: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> oil or scum line along shore objects <input checked="" type="checkbox"/> fine shell or debris deposits (foreshore) <input type="checkbox"/> physical markings/characteristics <input type="checkbox"/> tidal gages <input checked="" type="checkbox"/> other: 8.00 feet is generally high tide, or 8.5 |
| <input type="checkbox"/> Mean High Water Mark indicated by: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> survey to available datum; <input type="checkbox"/> physical markings; <input checked="" type="checkbox"/> vegetation lines/changes in vegetation types. | |

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:
Corps of Engineers confirmation of Bracut Marsh Final Report, Wetland Delineation, Calif. State Coastal Conservancy, 12-17-2007

Basis For Not Asserting Jurisdiction:

- ☐ The reviewed area consists entirely of uplands.
- ☐ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☐ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☐ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
 - ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
 - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
 - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
 - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
 - ☐ Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☒ This office concurs with the delineation report, dated December 2004, prepared by (company): State Coastal Conservancy
 - ☐ This office does not concur with the delineation report, dated _____, prepared by (company):
- ☐ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies: 1971 judicial list
- ☐ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Arcata South quad
- ☐ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☐ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey: 1965 UC Davis Soils of Western Humboldt County
- ☐ National wetlands inventory maps:
- ☐ State/Local wetland inventory maps:
- ☐ FEMA/FIRM maps (Map Name & Date):
- ☐ 100-year Floodplain Elevation is: _____ (NGVD)

- ☒ Aerial Photographs (Name & Date): In December 2004 applicant's report and Corps 1985 color infrared
- ☒ Other photographs (Date): Corps ground digital photos 11-16-07
- ☐ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on: 11-16-07
- ☐ Applicable/supporting case law:
- ☐ Other information (please specify):

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.